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## JUVENILE BENCHBOOK-PATERNITY

October, 2000

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## **PATERNITY**

### **Introduction**

Paternity cases uniquely require a judge to draw from skills honed in domestic relations cases, CHINS proceedings and, in some instances, estate and adoption actions. The judge must possess a knowledge of the terms and requirements of certain scientific and medical tests as well as law.

While general parallels exist between the Article in Title 31 between paternity actions and dissolutions, paternities have distinct statutory authority for custody and support. The ever-expanding paternity caseload experienced by many Indiana counties places demands on case management practices. Coordination between a dissolution action, a CHINS proceeding and a paternity action are no longer rare challenges for the trial judge. Thus, the ability to adapt to a family court process that coordinates the dynamics and needs of the extended families is a skill that should be developed.

The sections that follow in this benchbook provide for the current terms and requirements for genetic testing, pattern jury instructions, and form orders.

October, 2000

**SCOPE NOTE**  
**Jurisdiction**

**I. IN GENERAL**

A. The Indiana Rules of Civil Procedure apply to paternity actions.  
IC 31-14-3-1

B. Paternity may only be established by an action under IC 31-14; or by a paternity affidavit executed in accordance with IC 16-37-2-2.1. (For further explanation of Title 16 see chapter on Presumptions)  
IC 31-14-2-1

C. Each petition in a paternity action must:  
    (1) be verified; and  
    (2) be captioned "In the Matter of the Paternity of \_\_\_\_\_"  
IC 31-14-5-1  
    (3) Must show with crystal clarity that the child is a party to the action. In re H.J.F., 634 N.E.2d 551(Ind.Ct.App.1994)

**II. VENUE**

A. Venue lies in the county in which the child, the mother, or the alleged father resides.  
IC 31-14-3-2  
See TR 75 for change of venue.

**III. PARTIES**

A. Necessary parties: The child, the child's mother, and each person alleged to be the father are necessary parties to each action.  
IC 31-14-5-6

**Note: Presumed fathers are also necessary parties. See Chapter V. on Presumptions.**

B. Parties who may file: the mother or expectant mother; man alleging to be the father or expectant father, either individually or jointly; the child; the division or office of family and children; or the prosecuting attorney.  
IC 31-14-4

C. A child: A person under the age of eighteen (18) may file a petition if competent except for age. A person who is otherwise incompetent may file a petition through a guardian, a guardian ad litem, or next friend.  
IC 31-14-5-2

See TR 17( c) that permits a child to file in his or her own right, or through guardian ad litem or next friend, or in the name of his or her representative.

See also Matter of Paternity of P.L.M. by Mitchell, 661 N.E.2d 898 (Ind.Ct.App. 1996)

Child could maintain paternity action against alleged father, who admitted to being child's biological father, even though child was born during marriage of his mother and her husband and their marriage remained intact. C.J.C. v. C.B.J., 669 N.E.2d 197 (Ind. Ct. App. 1996), rehearing denied, transfer denied 683 N.E.2d 579.

Child had right to seek determination of paternity apart from any right of county department of public welfare to seek determination of paternity under assignment of child support rights granted as precondition to payment of Aid to Families with Dependent Children . Matter of Paternity of J.J.H., 638 N.E.2d 815 (Ind. Ct. App. 1994), rehearing denied, transfer denied.

Prior dismissal of mother's paternity action with prejudice by agreed entry did not bar child's action to establish paternity where child was not party to mother's action. P.N.B. by U.S. v. J.L.D., 531 N.E.2d 1203 (Ind.Ct.App. 1988), rehearing denied, transfer denied.

#### **IV. LIMITATION OF ACTIONS**

##### **A. Petition by minors and incompetent persons**

A child may file a paternity petition at any time before the child reaches twenty (20) years of age. However, if a child is incompetent on the child's eighteenth birthday, the child may file a petition not later than two (2) years after the child becomes competent.

IC 31-14-5-2

Expiration of limitations period in which putative father could bring action to establish his paternity did not bar putative father from bringing paternity action as child's next friend; statute of limitations only barred putative father from filing in his own name. Matter of Paternity of P.L.M. by Mitchell, 661 N.E.2d 898 (Ind.Ct.App. 1996), transfer denied.

##### **B. Time for filing action**

1. The mother, a man alleging to be the child's father, or the division of family and children or its agents must file a paternity action not later than two (2) years after the child is born, unless:

- a. both the mother and the alleged father waive the limitation on actions and file jointly;
- b. support has been furnished by the alleged father or by a person acting on his behalf, either voluntarily or under an agreement with:

I. the mother;

- ii. a person acting on the mother's behalf; or
- iii. a person acting on the child's behalf,
- c. the mother, the division of family and children, or the county office of family and children files a petition after the alleged father has acknowledged in writing that he is the child's biological father;
- d. the alleged father files a petition after the mother has acknowledged in writing that he is the child's biological father;
- e. the petitioner was incompetent at the time the child was born; or
- f. a responding party cannot be served with summons during the two (2) year period.

If any of the conditions described above exist, the paternity petition must be filed not later than two (2) years after the condition described above ceases to exist.

The above does not apply to an action filed by the division of family and children or its agents under IC 31-14-4.

IC 31-14-5-3

2. A child, or a person on a child's behalf, may file a paternity action any time before the child reaches 20 years of age, or later if the child is incompetent.

IC 31-14-5-2

County prosecutor is mandated to file paternity action on behalf of child when requested to do so by child's alleged father, even if father's own action to establish paternity is barred by two-year statute of limitations. Clark v. Kenley, 646 N.E.2d 76 (Ind. Ct. App. 1995), transfer denied.

3. Action by division or county office of family and children furnishing public assistance; time for filing action if:
- a. public assistance has been furnished for the child by the division of family and children; and
  - b. an assignment of support rights under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) has been executed on behalf of the child; the division of family and children or the county office of family and children may file an action before the child becomes nineteen (19) years of age or graduates from high school, whichever occurs first.

IC 31-14-5-4

State could not avoid five-year time limitation on its action against putative father to collect child support arrearage by asserting its claim for support arrearage in same paternity action in which state was acting as child's next friend; state cannot use its status as child's next friend to extend statute of limitations for recovery on support assignment. Goodman v. State, 611 N.E.2d 679 (Ind. Ct. App. 1993), rehearing denied, transfer denied.

4. Action must be filed during lifetime or within five months of death of alleged father.

IC 31-14-5-5

Period of limitations in this section for establishing paternity for purposes of support did not apply to paternity suits relating to proof of heirship and inheritance rights. Matter of Estate of Edwards, 562 N.E.2d 763 (Ind. Ct. App. 1990).

See also IC 29-1-2-7 regarding inheritance.

5. An action is not barred by: (1) the death or stillbirth of the child; or (2) the death of the mother.

IC 31-14-5-8

6. Except in cases involving the death of an alleged father, the statute of limitations in paternity actions are affirmative defenses and not jurisdictional issues. Matter of Paternity of P.L.M. by Mitchell, (Ct.App.1996) 661 N.E.2d 898.

### **C. Res Judicata**

Children were not barred by doctrine of res judicata in bringing an action, through mother as children's "next friend," to establish paternity against their putative father, even though judgment had been rendered against mother in previous paternity action, where children were not named parties in former paternity action but, rather, were subject of it, and where interests of children were not necessarily same as those of their mother. Kieler v. C.A.T. by Trammel, 616 N.E.2d 34 (Ind. Ct. App. 1993) rehearing denied, transfer denied.

Agreed order in out-of-state paternity action brought by state and mother as relator was not judgment on the merits sufficient to bar paternity action by child on grounds of res Judicata; child was not party to agreed order and there was no evidence that his various interests in establishing paternity were litigated on merits or addressed at all in course of negotiations among parties which resulted in \$1,000 cash payment to mother. Marsh v. Paternity of Rodgers by Rodgers, 659 N.E.2d 171 (Ind. Ct. App. 1995)

Child was not in privity with either party in prior paternity action brought in another state by state with child's mother as relator for purposes of res judicata; child was only two months old when prior action was brought and presumably did not control it, state initiated prior action primarily if not solely for purpose of collecting child support from alleged father, mother was party for purpose of applying for Aid to Families with Dependent Children (AFDC) benefits, and child had separate interests in establishment of paternity shared by neither state nor his mother. Marsh v. Paternity of Rodgers by Rodgers, 659 N.E.2d 171 (Ind. Ct. App. 1995)

Res Judicata was inapplicable to paternity support petition of child, since earlier action to establish paternity was filed not by or in the name of the child, but solely in the name of county welfare department upon an assignment of rights by the child's mother. Matter of M. D. H., 437 N.E.2d 119 (Ind. Ct. App. 1982)

Dissolution decree was not res judicata on issue of paternity, in putative father's paternity petition filed after divorce entered into- between mother and former husband, even though child was born during marriage of mother and husband; dissolution findings are binding on parties to dissolution and father was not party to the dissolution, and neither was child. In re Paternity of S.R.I., 602 N.E.2d 1014 (Ind. 1992).

#### **D. Doctrine of Laches**

Doctrine of laches did not bar paternity action by putative father, notwithstanding substantial lapse of time between date putative father learned of his rights and date he filed his petition to establish paternity, since record was devoid of any evidence of changed circumstances which would prejudice mother if putative father were permitted to prosecute his paternity action. In re Marriage of Moser, 469 N.E.2d 762 (Ind. Ct. App. 1984)

Child was not guilty of "laches" so as to bar paternity action due to mother's failure to bring action on behalf of child until eight years after dissolution proceeding in which defendant was determined not to be father of child; law clearly provided that child could file paternity petition at any time before he reached 20 years of age. Hood v. G.D.H. by Elliott, 599 N.E.2d 237 (Ind. Ct. App. 1992).

"Laches" is implied waiver resulting from knowing acquiescence in conditions and neglect to assert right, over unreasonable period of time resulting in prejudice to adverse party. Hood v. G.D.H. by Elliott, 599 N.E.2d 237 (Ind. Ct. App. 1992).

**SCOPE NOTE**  
**Commencement of Proceedings**

**I. IN GENERAL**

- A. Paternity action is governed by Civil Rules of Procedure.
- B. Service of Process under TR 4 is applicable.

**II. CONTENTS OF PETITION**

**A. If filed by private party:**

- 1. Be verified
- 2. Be captioned “In the Matter of the Paternity of \_\_\_\_\_,” and must show with crystal clarity that the child is a party to the action. In re H.J.F., 634 N.E.2d 551(Ind.Ct.App.1994); IC 31-14-5-1.
- 3. Name of Petitioner and relationship to child and child’s name and date of birth and that the child was born out of wedlock
- 4. Name of alleged father or expectant father (or mother)
- 5. Establish venue by stating either or combination of mother, child or alleged father live in county of filing
- 6. Prayer seeking relief including establish paternity, and right and responsibilities toward child
- 7. Verification clause

Mother Petitioner (see form P-3.02)

Father Petitioner (see form P-3.03)

Joint Petitioner (see form P-3.04)

Child Petitioner (see form P-3.05)

**B. If filed by Prosecuting Attorney:**

- 1. Must include all of the above
- 2. Reflect that the Prosecuting Attorney represents the child in that action IC 31-14-4-2

**C. If filed by the Division of Family and Children:**

- 1. Must include all of the above
- 2. Reflect that the Division is the assignee of support rights under IVD of the federal Social Security Act. IC 31-14-4-3.

**III. PUTATIVE FATHER REGISTRY**

- A. A man who files or is a party to a paternity action shall register with the putative father registry. IC 31-14-5-7
- B. Failure to file may constitute implied consent to the child’s adoption.

- C. To file with the Putative Father Registry, see form P-3.06.

Note: failure to register with Putative Father Registry does not waive notice for a paternity action. It may constitute a waiver in an adoption action. See in general IC 31-19-5.

#### **IV. CHILD'S RIGHTS**

- A. Child has the right to file paternity action up to their 20th birthday and if incompetent until 2 years after becoming competent.
- B. Child has right to file paternity action while mother is married against male who is not married to mother.
- C. Dissolution Decrees are not Res Judicata to child even if child listed as child of the marriage. Child can file against third party.
- D. Child may file for back support up to 20th birthday. Doctrine of laches is not a defense.
- E. Child may have right to contest ruling of no support or amount of support awarded.
- F. Juvenile Court may appoint a guardian ad litem or a court appointed special advocate or both for a child at anytime. IC 31-32-3-2
  - (1) Court may not appoint as a guardian ad litem or special advocate for a child a party to the proceedings, an employee of a party or a representative of a party. IC 31-32-3-2.
  - (2) Guardian ad litem or special advocate do not have to be but may be an attorney.
  - (3) Guardian ad litem or special advocate may be represented by an attorney to represent them but only one attorney may be appointed. IC 31-32-3-5.
  - (4) The fiscal body of the County shall appropriate money from the guardian ad litem or court appointed special advocate fund to the juvenile courts for the costs of the guardian ad litem and/or special advocate and costs of an attorney to represent them. IC 31-40-3-2.
- G. Guardian ad litem must be appointed where the party seeks to overcome the presumption of legitimacy. In re H.J.F., 634 N.E.2d 551 (Ind.Ct.App.,1994).

#### **V. Rights of Parties**

- A. Right to Counsel (see Chapter VI)
- B. Right to Trial by Jury (see Chapter VI)
- C. Right to Blood/Genetic Medical Testing (see Chapter IV)

See form P-3.07, Dialogue for Initial Hearing

STATE OF INDIANA       )  
  ) SS:  
COUNTY OF                )

IN THE \_\_\_\_\_ COURT  
Case No. \_\_\_\_\_

In the Matter of the Paternity of

\_\_\_\_\_  
(Name of Child)

\_\_\_\_\_  
Petitioner (mother)

\_\_\_\_\_  
(Name of Child) by (Guardian) (Guardian ad litem) (Next friend)

v.

\_\_\_\_\_  
Respondent (putative father)

**PETITION TO ESTABLISH PATERNITY**  
[IC 31-14-4-1(1)]

Comes now \_\_\_\_\_, individually and as next friend of child, and says:  
(mother/expectant mother)

1. She is the mother of \_\_\_\_\_ (name child), a child born on the  
day of \_\_\_\_\_, 200\_\_, at \_\_\_\_\_, and that said child was a child born out  
of wedlock.

OR

1. She is the expectant mother of \_\_\_\_\_, a child to be born out of  
wedlock on \_\_\_\_\_.  
(approx. date of birth)

2. \_\_\_\_\_ is the father of said child.  
(alleged father)

3. The petitioner has caused a search to be made of the putative father registry and  
notice shall be given as provided by law.

4. \_\_\_\_\_ is a resident of \_\_\_\_\_ County, Indiana.  
(mother/alleged father/child)

WHEREFORE, your petitioner prays the Court determine the paternity of said child and enter an order declaring that \_\_\_\_\_ is the father of said child. Your petitioner further prays that the Court make provisions as to the support, child's name, custody and visitation rights pertaining to said child, to enter an order concerning the costs of said action, and the reasonable and necessary expenses of the mother's pregnancy and childbirth, and for all other just and proper relief in the premises.

I affirm under the penalties for perjury that the foregoing representations are true.

Petitioner: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number

STATE OF INDIANA     )  
                                      ) SS:  
COUNTY OF                 )

IN THE \_\_\_\_\_ COURT

Case No. \_\_\_\_\_

In the Matter of the Paternity of

\_\_\_\_\_  
(Name of Child)

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
(Name of Child) by (Guardian) (Guardian ad litem) (Next friend)

v.

\_\_\_\_\_  
Respondent

**PETITION TO ESTABLISH PATERNITY**  
[IC 31-14-4-1(2)]

Comes now \_\_\_\_\_, individually and as next friend of child, and says:  
(father/expectant father)

1. He is the father of \_\_\_\_\_, a child born on the \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, and that said child was a child born out of wedlock.

OR

1. He is the expectant father of a \_\_\_\_\_, child to be born out of wedlock on \_\_\_\_\_.  
(approx. date of birth)

2. \_\_\_\_\_ is the mother of said child.  
(alleged mother)

3. The petitioner has caused a search to be made of the putative father registry and notice shall be given as provided by law.

4. \_\_\_\_\_ is a resident of \_\_\_\_\_ County, Indiana.  
(mother/alleged father/child)

WHEREFORE, your petitioner prays the Court determine the paternity of said child and enter an order declaring that \_\_\_\_\_ is the father of said child. Your petitioner further prays that the Court make provisions as to the support, child's name, custody and visitation rights pertaining to said child, to enter an order concerning the costs of said action, and the reasonable and necessary expenses of the mother's pregnancy and childbirth and for all other just and proper relief in the premises.

I affirm under the penalties for perjury that the foregoing representations are true.

Petitioner: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number

Case No. \_\_\_\_\_

3. The petitioner has caused a search to be made of the putative father registry and notice shall be given as provided by law.

WHEREFORE, your petitioners pray that the Court determine the paternity of said child and enter an order declaring that \_\_\_\_\_ is the father of said child. Your petitioners further pray that the Court make provisions as to the support, child's name, custody, and visitation rights pertaining to said child, to enter an order concerning the costs of said action, and the reasonable and necessary expenses of the mother's pregnancy and childbirth, and for all other just and proper relief in the premises.

We affirm, under the penalties for perjury, that the foregoing representations are true.

Petitioner: \_\_\_\_\_

Petitioner: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney No.

\_\_\_\_\_  
Attorney No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Phone Number

STATE OF INDIANA     )  
   ) SS:  
 COUNTY OF                 )  
 In the Matter of the Paternity of

IN THE \_\_\_\_\_ COURT

Case No. \_\_\_\_\_

\_\_\_\_\_  
 (Name of Child)

\_\_\_\_\_  
 (Name of Child)

by \_\_\_\_\_  
 (Guardian) (Guardian ad litem) (Next friend)  
 Petitioner

v.

\_\_\_\_\_  
 Respondent (mother)

\_\_\_\_\_  
 Respondent (alleged father)

**PETITION TO ESTABLISH PATERNITY**  
 [IC 31-14-4-1(5)]

Comes now \_\_\_\_\_, Child, by \_\_\_\_\_, (guardian/guardian ad litem/next friend), who says:

1. \_\_\_\_\_ is the mother of \_\_\_\_\_, a child born on \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, and that said child was a child born out of wedlock.

2. \_\_\_\_\_, is the father of said child.  
       (alleged father)

3. \_\_\_\_\_ is a resident of \_\_\_\_\_ County, Indiana.  
       (mother/alleged father/child)

4. The petitioner has caused a search to be made of the putative father registry and notice shall be given as provided by law.

WHEREFORE, your petitioner prays the Court determine the paternity of said child and enter an order declaring that \_\_\_\_\_ is the father of said child. Your petitioner further prays that the Court make provisions as to the support, child's name, custody and visitation rights pertaining to said child, to enter an order concerning the costs of said action, and for other just and proper relief in the premises.

I affirm under the penalties for perjury that the foregoing representations are true.

Petitioner: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Child) (Guardian) (Guardian ad litem) (Next friend)

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number

# **DIALOGUE FOR INITIAL HEARING PATERNITY**

## CHECKLIST

## DIALOGUE

[This is a juvenile proceeding. Proceeding confidential by statute. See Scope Note.]

### 1. Opening

This is Paternity CASE NO. \_\_\_\_\_, entitled In The Matter Of The Paternity Of . We are here today for an initial hearing on a petition to establish paternity of a child.

### 2. Parties present

We have present:  
Petitioner(s). Please state your address, date of birth, social security number, and telephone number. And also in court is \_\_\_\_\_ Respondent(s). Please state your address, date of birth, social security number, and telephone number. And, Counsel for Petitioner; \_\_\_\_\_ Counsel for Respondent; \_\_\_\_\_ Other: \_\_\_\_\_.

### 3. Service; Copy of petition

The record indicates a copy of the petition was served on \_\_\_\_\_.  
\_\_\_\_\_ (Respondent) Have you received a copy of the petition?  
A:

\_\_\_\_\_ (Respondent) have you had an opportunity to read this petition?  
A:

### 4. Petition, nature and

(Read petition in material part)

advisement of allegations

This petition alleges that \_\_\_\_\_ is the mother of the child, that the child was born out-of-wedlock on day of 20\_\_ at \_\_\_\_\_ place of birth, county, \_\_\_\_\_ state, and that \_\_\_\_\_ (alleged father) is the father of the child.

**NOTE: If there are multiple respondents, please modify your dialogue accordingly.**

\_\_\_\_\_ (Respondent) Do you understand the nature of these allegations?

A:

5. Advisement of rights

\_\_\_\_\_, (Respondent) You have the following rights in these proceedings:

1. You have a right to represent yourself in this proceeding. You also have the right to hire an attorney to help you in this matter. If you cannot afford an attorney certain organizations may be able to represent you for free. (If applicable, give telephone number of appropriate organization.) If this action is brought by the State of Indiana on behalf of the child you have the right to be represented by counsel at public expense if you are indigent. At this time do you wish a continuance to consult with or to obtain an attorney? (If no, proceed with advisement.)

A:

**NOTE: If the defendant requests an attorney and claims to be indigent, please make a record of the indigence at this time.**

2. You have the right to admit or deny that

you are the father of this child. If you deny, you also have the right to a trial. Either party may request the issue of paternity be tried by a jury with all other issues tried by the court. If you request a trial by jury certain time limits apply.

**NOTE: Requests for a jury trial must be in writing according to Trial Rule 38. The Benchbook Committee believes that such request is untimely if not within 10 days of the denial.**

3. The petitioner has the burden of proving the petition by clear and convincing evidence.

4. You also have the right to obtain witnesses or tangible evidence by compulsory process, to introduce evidence on your own behalf, to cross-examine witnesses against you, and to testify yourself.

Do you understand these rights?

A:

## 6. Blood/Genetic tests

To Petitioner and Respondent:

You are also advised that upon the motion of either party to this proceeding the court will order blood or genetic tests.

**NOTE: Blood/Genetic test results and findings are admissible in all paternity proceedings unless the court excludes the results or findings for good cause.**

**If blood or genetic tests are requested and ordered the court may assess costs against either or both parties.**

7. Paternity finding

To Respondent: If the court establishes paternity in this action the court will determine the issues of custody, visitation, birth costs, past and future support and medical expenses, and name of the child. Do you understand all of the above?

A:

8. Admission or denial

If you admit the paternity of this child, you give up the right to a trial. Do you understand that you do not have to admit anything and that if you deny paternity you are entitled to a trial as quickly as possible?

A:

Do you admit or deny paternity?

A:

**NOTE: If denial, go to #12.**

9. Establishment of factual basis

Let the record show that the Respondent admits the allegations of the petition.

**NOTE: The Benchbook Committee recommends a factual basis be established on the record. The better practice even where both parties are represented by counsel and are in agreement on all issues is to make an evidentiary record on the question of paternity. The purpose is to preclude an attack on the judgment years down the road. The committee also recommends that the parties be questioned under oath.**

**NOTE: The counsel or prosecutor should propose the following questions to the**

**parties to establish factual basis and for specific information for the judgment.**

Counsel questions parties under oath to establish admission of paternity and establish factual basis therefor.

Factual basis checklist:

**Mother**

1. Full name, state of birth, date of birth, maiden name, race, social security number.
2. Mother's marital status at date of conception and birth.
3. Where (city, county, state and hospital) was the child born?
4. Date of birth of child.
5. Establish that the parties engaged in sexual intercourse at a time consistent with conception and birth.
6. The child's name at birth and whether a birth certificate was issued.

**Father**

1. Full name, state of birth, date of birth, race, social security number.
2. Address, city, county and state.
3. Admission by father that he engaged in sexual intercourse with the mother at a time consistent with conception and birth.

\_\_\_\_\_ (Mother's name), do you believe in fact that he is the father?

\_\_\_\_\_ (Mother's name), are you aware that your assertion is final and not revocable?

\_\_\_\_\_ (Mother's name), do you understand that certain rights and responsibilities vest in the father including the right to custody, visitation, support, educational and medical expenses?

\_\_\_\_\_ (name), do you believe in fact that you are the father?

(name), do you understand that certain rights and responsibilities vest in the father including the right to custody, visitation, support, educational and medical expenses?

10. Judgment of paternity

The court finds and enters judgment that is the father of \_\_\_\_\_ (Child) born on \_\_\_\_\_ date, in \_\_\_\_\_ county and state to \_\_\_\_\_ (mother).

11. Rights and responsibilities of parties

The court must determine each party's rights and responsibilities to be included in the paternity judgment. Is there any agreement on custody, visitation, birth costs, past and future support and medical expenses, and the child's name?

**NOTE:** If yes, have parties state agreement on the record. If any contested issues remain, set a separate hearing date for those issues.

After determination of parties rights and responsibilities, the proceeding concludes. Enter judgment accordingly.  
The court should enter temporary orders as needed.

12. Denial of paternity

Let the record show that the Respondent denies paternity.

A. Does either party request blood/genetic testing?

**NOTE:** If yes, inquire as to time, place and date of blood/genetic testing, and arrangements for costs. Admonish that child, mother and father must appear for blood/genetic testing. Enter this as an order. See Scope Note P-4.01, Blood/Genetic Tests.B. If the Respondent denies paternity, a trial date and pre-trial date should be set.

13. Temporary orders

The court should enter temporary orders as needed.

**SCOPE NOTE**  
**Blood/Genetic Medical Testing**

**NOTE:** Please be aware the throughout the paternity statutes the legislature has used the terms “blood”, “genetic” and “medical tests”, but not necessarily interchangeably.

**I. TESTING:**

A. Upon the motion of any party, the court **shall** order all parties involved to undergo blood or genetic testing to be performed by a qualified expert approved by the court.

IC 31-14-6-1 and T.R. 35

See Form P-4.-02 Order for Blood or Genetic Tests

B. Blood/genetic tests are governed by IC 31-14-6 and T.R. 35. Traditionally, “the moving party pays the initial cost of any test he requests”. However, in a case where the State files a paternity action on behalf of a mother receiving public assistance, an indigent respondent’s rights to due process includes the right to have blood test performed and initially paid for by the State.

Murdock v. Murdock, 480 N.E.2d 243 (Ind.Ct.App., 1985)

The denial of a blood grouping test to an indigent paternity defendant violated due process.

Kennedy v. Wood, 439 N.E.2d 1367 (Ind.Ct App.,1982)

The trial court is without discretion to refuse to order blood tests when paternity is an issue.

Murdock v. Murdock, 480 N.E.2d 243 (Ind.Ct App.1985)

Cooper v. Cooper, 608 N.E.2d 1386 (Ind.Ct App., 1993)

Paternity of J.W.L. v. A.J.P., 693 N.E. 959 ( Ind.Ct App., 1998)

In a case where the mother and a putative father filed a joint petition to establish paternity and subsequently the mother expressed doubt as to paternity and requested blood tests, the court held that since paternity was conclusively admitted by the pleading it was not error to deny the request for blood test; the blood test statute is applicable only in adversarial settings.

Rundel v. Shade, 492 N.E. 2d 694 (Ind. Ct.App. 1986)

**Note:** The court may anticipate that in order to meet federal requirements, the IV-D office may wish to have same day blood testing.

**Note: The Benchbook Committee recommends Genetic testing in all cases.**

See Form 4.03, 4.04 Agreed Stipulation for Blood/Genetic Testing, Order

## II. ADMISSIBILITY/OBJECTIONS

A. The statute provides for admissibility and evidentiary value of results, taxing of initial cost of blood test paid by the state, and establishing genetic chain of custody of blood specimens.

B. A party may object to the admissibility of **genetic test results** obtained if they filed a written objection **at least 30 days** before a scheduled hearing at which the results will be offered as evidence. If no objection, genetic test results are admissible.

IC 31-14-6-2

Rundel v. Shade, 492 N.E. 2d 694 (Ind. Ct.App. 1986)

Summary judgment was properly denied even though the initial blood test in paternity action excluded the alleged father based on a genuine issue of material fact. *Read carefully*, Hudson v. Bratcher, 551 N.E. 2d 1160 (Ind.Ct App., 1990)

Pursuant to Evid. Rule 803(6), a report of the results of blood or genetic testing for paternity is admissible under the business records exception to the hearsay rule after a proper foundation is established. IC 31-14-6-3 is an exception to Evid. Rule 803(6).

Humbert v. Smith, 664 N.E.2d 356 (Ind. 1996)

## III. EVIDENTIARY ISSUES

SEE Evidence Rules 702,703 and 704 concerning expert testimony and 803 concerning hearsay exceptions.

SEE IC 31-14-6-2 concerning admissibility of blood genetic tests without foundation testimony.

Blood test records may be admissible under the “business record exception to the hearsay rule.” Such records may be authenticated by the custodian of the record or anyone who possessed the requisite knowledge with respect to the record.

Baker v. Wagers, 472 N.E. 2d 218 (Ind.Ct. App. 1984)

An expert in Riley Children’s Hospital performing blood tests is not “an agent of any of the parties” so as to render the record in question inadmissible as a document prepared for litigation. Id.

An expert witness is permitted to state his opinions based upon tests performed by technicians under his direction. Id.

Admissibility in dissolution proceedings: evidence of blood-grouping tests performed by an expert on husband, wife and child were admissible in divorce proceedings to prove non-paternity of father. Beck v. Beck, 304 N.E. 2d 541 (Ind.Ct.App. 1973)

## IV. COSTS

The court shall determine the manner in which reimbursement is made.

IC 31-14-6-4

Upon a showing in indigence, due process requires that testing costs be paid by the state.  
Murdock v. Murdock, 480 N.E. 2d 243 (Ind.Ct. App. 1984)

## **V. CHAIN OF CUSTODY OF BLOOD SPECIMENS TAKEN FOR TESTING**

A. The chain of custody of blood specimens taken for testing may be established through verified documentation of each change of custody if the documentation was made : (1) at or around the time of the change of custody; (2) in the course of a regularly conducted business activity and (3) as a regular practice of a business activity.

IC 31-14-6-5

## **VI. GENETIC TESTING**

**Note:** Generally, most health experts will not draw blood from an infant younger than six months. However genetic testing using buccal cell testing is non-invasive and may be used on infants. There is no age limit on DNA testing. The analysis procedure is done by RFLP (Restriction Fragment Length Polymorphism)

See SAMPLE LABORATORY REPORT

## **VII. VOCABULARY TERMS-GENETIC TESTING**

**Antigen** a genetic product that is detected by the use of antibodies

**Band** line-like appearance of a DNA fragment, red cell enzyme or serum protein

**Base** one of four molecules (adenine, cytosine, guanine and thiamin) which encode the genetic information help by a molecule of DNA

**Buccal cells** are collected from the inside of the cheek

**CPI – Combined Paternity Index** the product of each of the individual paternity indices

**DNA** Deoxyribonucleic Acid

**Direct exclusion** presence of genetic information in the child that is not present in either the mother or the alleged father.

**Genetic marker** an inherited characteristic that can be recognized when an individual is tested.

**HLA – Human Leukocyte Antigen-** The genetic marker found on the surface of white cells

**RFLP-** A DNA polymorphism which is detected as different fragment lengths following digestion with a specific restrictions.

STATE OF INDIANA    )  
                                  ) SS:  
COUNTY OF            )

IN THE \_\_\_\_\_ COURT

Case No. \_\_\_\_\_

In the Matter of the Paternity of

\_\_\_\_\_, by next friend,

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Respondent

**ORDER FOR BLOOD OR GENETIC TEST**

[IC 31-14-6-1]

Upon motion of \_\_\_\_\_ for blood/genetic (circle one) tests the court orders that:

1. The request for blood/genetic tests is hereby granted;
2. The costs of the blood/genetic tests shall initially be paid by \_\_\_\_\_;  
(person)
3. \_\_\_\_\_ shall undergo a  
(Name all parties)

blood/genetic test at \_\_\_\_\_.

4. That \_\_\_\_\_ shall make arrangements for the blood/genetic testing and analysis and give all parties and the Court adequate advance notice of the date and time the sample will be obtained.

Or

4. All parties (including child) are ordered to appear at \_\_\_\_\_, on \_\_\_\_\_, 200 at \_\_\_\_m. and cooperate with all genetic testing procedures.

So ORDERED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Judge

STATE OF INDIANA     )  
                                  )SS:  
COUNTY OF             )

IN THE \_\_\_\_\_ COURT

Case No.: \_\_\_\_\_

IN THE MATTER OF THE PATERNITY OF:

\_\_\_\_\_  
b/n/f

\_\_\_\_\_  
Petitioner

vs.

\_\_\_\_\_  
Respondent

(Sample)  
**AGREED STIPULATION**

It is hereby stipulated and agreed by and between the parties, as follows:

1. That the Petitioner \_\_\_\_\_, the minor child \_\_\_\_\_ and the Respondent \_\_\_\_\_, shall be ordered to submit to paternity genetic tests to determine whether the Respondent is medically excluded from the possibility of paternity of the minor child and, if not excluded, the probability that the Respondent is the father of said child.
2. That the genetic samples of the Petitioner, the minor child and the Respondent will be drawn at \_\_\_\_\_ and said samples shall be analyzed to a 99% or greater probability of paternity at \_\_\_\_\_ [example: GeneScreen, 5698 Springboro Pike Road, Dayton, Ohio 45449.)
3. That the results of said tests and the written report(s) thereof, shall be admissible as evidence per se, without hearsay consideration or expert identifying testimony in any proceedings brought by either party, now or in the future, in which that paternity of the minor child may be at issue. However, this stipulation does not restrict either party from calling expert witnesses to explain the proceeding or interpret the results of said tests, and the probability of exclusion of paternity.
4. That the State of Indiana shall pay for the genetic test cost of \$\_\_\_\_\_ subject to the following provision: That the Respondent shall reimburse the State of Indiana the entire cost of the genetic tests (\$\_\_\_\_\_) should he be found to be the father of said minor child.
5. Genetic samples shall be drawn within 30 days from the date of this Agreed Stipulation. Parties must contact the \_\_\_\_\_ to schedule an appointment for samples to be taken.

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Attorney for Respondent

\_\_\_\_\_  
Respondent

STATE OF INDIANA     )  
                                  )SS:  
COUNTY OF             )

IN THE \_\_\_\_\_ COURT

Case No.: \_\_\_\_\_

IN THE MATTER OF THE PATERNITY OF:

\_\_\_\_\_  
b/n/f

\_\_\_\_\_  
Petitioner

vs.

\_\_\_\_\_  
Respondent

### ORDER

The Court, having examined the above and foregoing Agreed Genetic Test Stipulation, now approves the same and finds that it should be and hereby is made the Order of this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 2000.

\_\_\_\_\_  
Judge

Copies to:  
Prosecutor's Office  
Petitioner  
Respondent

**SCOPE NOTE**  
**Presumptions in Paternity Actions**

**I. PRESUMPTION IN CIVIL ACTIONS AND PROCEEDING**

In all civil actions and proceedings not otherwise provided for by constitution, statute, judicial decision or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. A presumption shall have continuing effect even though contrary evidence is received.

**Evid.R. 301**

**II. PRESUMPTIONS OF PATERNITY**

A. Presumed Biological Fathers

1. Husband, if child is born during legal, void or voidable marriage, or within three hundred (300) days after termination of such marriage.

I.C. 31-14-7-1 (1)(2)

2. Husband, if child is born prior to legal, void or voidable marriage and husband and wife/mother execute and file paternity affidavit after such marriage.

I.C. 16-37-2-16

**Note: Court may enter order establishing paternity and order support unless man who executed paternity affidavit rebuts paternity at hearing.**

**I.C. 31-14-11-1**

In divorce proceeding, silence and the presumption that a child born during the marriage is legitimate will establish paternity.

Cooper v. Cooper, 608 N.E.2d 1386 (Ind.Ct.App.1993)

To be a “child of the marriage”, the child must be either a biological or adopted child of both parents.

Cochran v. Cochran, 717 N.E. 2d 892 (Ind.Ct.App.1999)

Child conceived during marriage through artificial insemination of mother by third party donor with her husband’s fully informed consent was a child of the marriage.

Levin v. Levin, 645 N.E. 2d 601 (Ind.1994)

3. Man and child's mother execute and file paternity affidavit under I.C. 16-37-2-2.1.

I.C. 31-14-7.1(3)

**Note: Court may enter order establishing paternity and order support unless man who executed paternity affidavit rebuts paternity at hearing.  
I.C. 31-14-11-1**

4. Man undergoes blood test that indicates a ninety-nine percent (99%) probability that the man is the child's biological father.

I.C. 31-14-7-1(4)

5. If none of the above, man, if he receives the child into his home and openly holds the child out as his biological child, all with the consent of the child's mother.

I.C. 31-14-7-2

## B. Rebuttal of Presumption

### 1. Burden of Proof

Presumption that child born during marriage is legitimate is not conclusive and may be rebutted by direct, clear and convincing evidence.

Fairrow v. Fairrow, 559 N.E.2d 597 (Ind.1990)

Statutory presumption that man who acknowledged paternity in writing is child's father may be rebutted by same evidence that is used to rebut presumption that husband is father of child born during marriage.

Fowler v. Napier, 663 N.E.2d 1197 (Ind.Ct.App. 1996)

### 2. Factors

a. Genetic testing.

b. Man impotent or sterile

c. Man absent so as to have no access to child's mother at probable time of conception

d. Was present with mother only in circumstances which clearly prove there was no sexual intercourse

Minton v. Weaver, 697 N.E. 2d 1259 (Ind.Ct.App. 1998)

Cooper v. Cooper, 608 N.E.2d 1386 (Ind.Ct.App.1993)

e. Stipulation.

Settlement agreement and stipulation [between neighbor and mother], effectively representing as it did the testimony of neighbor and mother as to neighbor's paternity, constituted sufficient evidence to rebut the presumption [that mother's husband was father of child born to the marriage.]

K.S. v. R.S., 669 N.E.2d 399 (Ind.1996)

### 3. Presumption irrefutable

Child born during decedent's marriage was presumed to be decedent's biological child and this presumption became irrefutable, for heirship purposes, upon decedent's death.

Estate of Lamey v. Lamey, 689 N.E.2d 1265 (Ind.Ct.App.1997)

Irrefutable for wrongful death purposes, too.

Johnson Controls, Inc. v. Forrester, 704 N.E.2d 1082 (Ind.Ct.App.1999)

### **III. PRESUMPTION OF SUPERVISED VISITATION**

If a court finds that a non-custodial parent has been convicted of a domestic battery under IC 35-42-2-1.3, that was witnessed or heard by the non-custodial parent's child, a rebuttable presumption is created that the court shall order that the non-custodial parent's visitation with the child must be supervised for at least one (1) year and not more than two (2) years immediately following the domestic battery conviction or until the child becomes emancipated.

I.C. 31-14-14-5

### **IV. PRESUMPTION AS TO CHILD SUPPORT**

Presumption that amount of child support called for by child support guidelines was correct.

Matter of Paternity of Humphrey, 583 N.E.2d 133 (Ind.1991)

### **V. PRESUMPTION OF CORRECTNESS OF FOREIGN PATERNITY DETERMINATION**

The court shall extend full faith and credit to another states' paternity determination.

I.C. 31-14-19-1

There is a constitutional presumption that foreign paternity determination is valid and bars later paternity proceedings.

J.W.L. By J.L.M. v. A.J.P., 672 N.E.2d 966 (Ind.Ct.App.1996)

### **VI. PRESUMPTION AS TO CUSTODY**

A. Child's mother has sole legal custody if paternity is established by paternity affidavit.

I.C. 16-37-2-2.1(F)

B. A biological mother of child born out of wedlock has sole legal custody of the child unless statute or court provides otherwise.

I.C. 31-14-13-1

C. A parent has superior right to custody and nonparent seeking custody bears burden of overcoming presumption. The presumption may be overcome by finding that any of the following three conditions exist:

1. Unfitness of the natural parent
2. Long acquiescence in the child living in the care of others, or

3. Voluntary relinquishment of custody of the child to others such that the affections of the child and the third party have become so interwoven that to sever them would seriously endanger the future happiness of the child.

If any of those three conditions is proven, then the question becomes whether it is in the best interests of the child to be placed in the custody of the third party. However, law clearly prefers to consider best interests of the child over the presumption that custody must be in a parent.

In Re Paternity of L.K.T., 665 N.E.2d 910 (Ind.Ct.App.1996)

In Re the Marriage of Huber, 723 N.E.2d 973 (Ind.Ct.App. 2000)

**SCOPE NOTE**  
**Adjudication**

**I. PROVISIONAL ORDERS**

A. Paternity Determination as Pre-requisite to Other Provisional Orders.

1. Custody, support and visitation issues to be resolved upon finding of paternity. I.C. 31-14-10-1. (The Court may request Probation Officer or Caseworker to assist the Court in determining these issues) See I.C. 31-14-10-2 and I.C. 31-14-10-3; See Form P-6.02, Judgement of Paternity.

Prior to entering support, custody and visitation orders the Court must first resolve the question of whether the child is a biological child of both parents. Cochran v. Cochran, 717 N.E.2d 892 (Ind. App. 1999).

2. Finding of paternity may be entered without a hearing, i.e. stipulation or joint petition. See I.C. 31-14-8-1.

B. Custody and Visitation.

Mother shall have sole custody of the child unless otherwise ordered by the Court, (See I.C. 16-37-2-2.1), even if paternity has been established, unless otherwise ordered under I.C. 31-14 et seq.

C. Support

1. The Court shall issue temporary orders for support if there is clear and convincing evidence of paternity.  
I.C. 31-14-11-1.1
2. Paternity affidavit provides the right to seek support.  
I.C. 16-37-2-2.1  
See Fowler v. Napier, 663 N.E.2d 1197 Ind. App. 1996, indicating paternity affidavit creates a rebuttable presumption.

**Note: Benchbook Committee believes that a rebuttable presumption of paternity would be a sufficient basis to establish a provisional support order.**

3. Amount of support. Indiana Child Support Guideline 2 incorporates child support guidelines for purposes of paternity.

See also I.C. 31-14-11-2. Factors for determining amount of child support, compare I.C. 31-16-6-1 regarding dissolutions.  
Matter of Paternity of Humphrey, 583 N.E.2d 133 (Ind.1991).  
A support order can be entered even though father does not submit a worksheet or income amount.  
Die v. Young, 655 N.E.2d 549 (Ind.Ct. App. 1995).  
See Form P-6.03, Judgement of Paternity and Order for Custody, Support, Visitation, Name of Child and Costs.

D. Appointment of Guardian ad Litem

Appointment of Guardian Ad Litem is discretionary in paternity cases. Paternity of ARR v. PC, 634 N.E.2d 786 Ind. App. 1994. But see VME v. Eageny, 668 N.E.2d 715, Ind. App. 1996. Appointment of Guardian Ad Litem is mandatory when child's interests are not adequately represented. I.C. 31-15-6-1.  
Guardian Ad Litem must be appointed to protect child's interest in all paternity cases where party seeks to overcome presumption that child born in wedlock is legitimate; in such proceeding, mother's rights may be adverse to child's, and presumptive father's parental rights may be terminated.

Matter of Paternity of H.J.F., 634 N.E.2<sup>nd</sup> 551 (Ind. Ct. App. 1994).

**II. INITIAL HEARING**

A. If adoption is pending, initial hearing to be held within thirty days after filing of petition or birth of child. The Court is required to order blood testing for all parties at the initial hearing. Final hearing to determine paternity to be held within ninety (90) days of initial hearing. Ruling on paternity must be entered within 14 days thereafter.

I.C. 31-14-21-9 et seq.

B. Default

1. If alleged father in a paternity action fails to appear for a hearing relating to the man's paternity, the Court shall enter an order against the man upon a showing that the man received notice of the hearing.

I.C. 31-14-8-2.

But see: Hampton v. Douglas, 457 N.E.2d 618, Ind. App. 1983, which holds that the policy behind default judgments is inapplicable in paternity settings where a responsive pleading is automatically presumed for the precise purpose of expediting support for the child. If man fails to appear, Petitioner must still present a prima facie case. The Court may then render an appropriate judgment.

2. Default judgment entered in violation of Soldiers and Sailors Act is voidable and not void. A party may waive objections to an invalid judgment on the basis of estoppel by failing to object in a timely manner, i.e. father pays support for two years before attacking the judgment. Paternity of TMY v. York, 725 N.E.2d 997, Ind. App. 00.

C. Standard of Proof

1. Burden of proof to establish paternity is by a preponderance of the evidence.  
Collins v. Wise, 296 N.E. 2d 887, (Ind. Ct. App., 1973).
2. In a paternity action, the burden is on the petitioner to prove that the defendant is the father of the child. Testimony of the mother regarding an act of sexual intercourse with the defendant, coupled with the probability of pregnancy is sufficient to support a determination that the defendant is the father of the child. The mere possibility of a pregnancy is not sufficient to establish paternity.  
Roe v. Doe, 289 N.E.2d 528, (Ind.Ct.App., 1972).
3. An act of intercourse, coupled with probability of conception at that time will support a determination of paternity. An act of intercourse, plus the possibility of conception, however, as a matter of law, cannot serve to support such a determination.  
Beaman v. Hedrick, 255 N.E.2d 828, (Ind.Ct. App., 1970).

### III. TRIAL BY JURY

- A. Rules of Civil Procedure apply to paternity cases.  
I.C. 31-14-3-1
- B. Trial by Jury inviolate in civil cases. Ind. Const. Art. 1, Sec. 20
- C. See Trial Rule 38. Proper to deny jury request if not timely made.  
Houchin v. Wood, 317 N.E. 2d 911 (Ind. Ct. App. 1974).  
See Form P-6.04 Instructions

### IV. RIGHT TO COUNSEL

- A. In a case where a parent is the recipient of public assistance and the state has an interest under Title IV-D, due process and fundamental fairness demands that counsel be appointed to represent the respondent in a paternity action. Also, the denial of blood grouping test to an indigent paternity defendant violated due process. Kennedy v. Wood, 439 N.E.2d 1367 (Ind.Ct.Cpp.1982).

See also Holmes v. Jones, 719 N.E. 2d 843, (Ind. Ct. App., 1999). There is a question whether this decision expands indigent appointment of counsel for any indigent person.

## **V. NAME CHANGE**

- A. Biological father seeking to obtain name change of nonmarital child bears burden of persuading court that change is in child's best interest, and absent evidence of child's best interests, father is not entitled to obtain name change.
1. Trial court's order on biological father's petition to obtain name change of nonmarital child is reviewed under abuse of discretion standard.
  2. Where surname change is sought in paternity action, trial court may properly consider whether child holds property under given name, whether child is identified by public and private entities and community members by particular name, degree of confusion likely to be occasioned by name change, and, if child is of sufficient maturity, child's desires; other factors are birth and baptismal records of child, school records of any older children, health records, and impact of name change when there are siblings involved whose names would not be changed. In re the Paternity of Anthony Tibbitts, 668 N.E.2d 1266 (Ind. Ct. App. 1997).  
See also D.R.S v R.S.H., 412 N.E.2d 1257 (Ind. Ct. App. 1980)
  3. Under the Uniform Interstate Family Support Act, (UFISA), a receiving state may not have jurisdiction to change name.  
I.C.31-18-7-2

## **VI. CUSTODY/VISITATION**

- A. A biological mother of a child born out of wedlock has sole legal custody of the child, unless a court order or statute provides otherwise. (Involuntary commitment of the child; guardianship and protective proceedings; custody of a child born outside of a marriage; CHINS; delinquent child; offenses against the family; criminal sentences)  
I.C. 31-14-13-1.
- B. The Court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:
- (1) The age and sex of the child.
  - (2) The wishes of the child's parents.
  - (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
  - (4) The interaction and interrelationship of the child with:
    - (a) the child's parents;
    - (b) the child's siblings; and

(c) any other person who may significantly affect the child's best interest.

(5) The child's adjustment to home, school, and community.

(6) The mental and physical health of all individuals involved.

(7) Evidence of a pattern of domestic violence by either parent.

(8) Evidence that the child has been cared for by a de facto custodian (see I.C. 31-14-13-2.5).

C. The modification statute rather than the initial custody statute applies where there is a long period of acquiescence by the father to the child residing with the mother. In Re Dale Zee Winkler, 725 N.E.2d 124 (Ind. Ct. App. 2000) (mother had custody for ten (10) years with father's agreement before Paternity action was filed.)

D. Agreement between the parties is not binding upon the trial court if the Court determines the agreement is contrary to the best interests of the child.

In the Matter of the Paternity of K.J.L. 725 N.E.2d 155 (Ind. Ct. App. 2000). at 158, citing Keen v Keen, 629 N.E.2d 938 (Ind. Ct. App. 1994).

E. A noncustodial parent is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation might:

(1) endanger the child's physical health and well-being; or

(2) significantly impair the child's emotional development.

I.C. 31-14-14-1.

Rebuttable presumption for supervised visitation if non-custodial parent convicted of battery. I.C. 31-14-14-5

F. Injunctive relief and/or a temporary restraining order may be available to enforce visitation rights.

I.C. 31-14-15-1

I.C. 31-14-15-2.

G. CAUTION: There are variations in the statutes relating to paternity and dissolution.

In the Matter of the Paternity of K.J.L. 725 N.E.2d 155 (Ind. Ct. App. 2000).

## **VII. PATERNITY IN A DISSOLUTION PROCEEDING**

A. To be a child of the marriage, the child must be either a biological or adopted child of both parents.

Cochran v Cochran, 717 N.E.2d 892 (Ind. Ct. App. 1999)

B. Divorcing spouses who stipulate or otherwise explicitly or implicitly agree that a child is a child of the marriage will be precluded from later challenging that determination, except in extraordinary circumstances, but child and putative father are not similarly barred.

Russell v Russell, 682 N.E.2d 513 (Ind. 1997).

## **IX. CHILD SUPPORT**

- A. The court may order either or both parents to pay any reasonable amount for child support after considering all relevant factors, including the following:
- (1) The financial resources of the custodial parent.
  - (2) The standard of living the child would have enjoyed had the parents been married and remained married to each other.
  - (3) The physical and mental condition of the child.
  - (4) The child's education needs.
  - (5) The financial resources of the noncustodial parent.
- I.C. 31-14-11-2  
Indiana Child Support Guidelines apply to all paternity actions. See Support Rule 2.
- B. Uniform Indiana Family Support Act (UIFSA) replaced the Uniform Reciprocal Enforcement of Support Act (URESA). In a proceeding to establish, enforce, or modify a support order or to determine paternity, an Indiana tribunal may exercise personal jurisdiction over a nonresident individual under certain circumstances.
- I.C. 31-18-2 et seq.  
See also I.C. 31-18-7-1- Proceeding to determine parentage.
- C. Income Tax Dependency Exemption.  
Trial court may order custodial parent to execute waiver of his or her right to federal tax dependency exemption for a particular year. In re the Paternity of Thompson, 604 N.E.2d 1254 (Ind. Ct. App. 1992).  
See Guideline 6, additional commentary to Indiana Child Support Guidelines.
- D. Income Withholding. Upon application to establish, modify, or enforce a child support order, the court shall enter an order for immediate income withholding and activate any any previous income withholding. However, the court can issue an income withholding order that will not become activated if there is a written agreement for an alternative child support arrangement or good cause exists not to require immediate income withholding.
- I.C. 31-16-15-1

**Note: The Benchbook Committee believes that I.C. 31-16-15-1 supercedes I.C. 31-14-12-2.**

- E. Retroactive Support. The support order:
- (1) may include the period dating from the birth of the child; and
  - (2) must include the period dating from the filing of the paternity action.
- I.C. 31-14-11-5.  
Award of retroactive support for 104 weeks prior to filing of action affirmed. In Re Paternity of R.B.T., 550 N.E.2d 769 (Ind. Ct. App. 1990).

**X. OTHER EXPENSES SUBJECT TO ORDER**

- A. Childbirth expenses. The court shall order the father to pay at least fifty percent (50%) of the reasonable and necessary expenses of the mother's pregnancy and childbirth, including the cost of:

- (1) prenatal care;
- (2) delivery;
- (3) hospitalization; and
- (4) postnatal care.

I.C. 31-14-17-1

- B. Funeral Expenses. If the child dies while a support order is in effect, the court may order either or both parents to pay reasonable funeral expenses. I.C. 31-14-11-17

STATE OF INDIANA       )  
                                   ) SS:  
 COUNTY OF                )

IN THE \_\_\_\_\_ COURT

Case No. \_\_\_\_\_

In the Matter of the Paternity of

\_\_\_\_\_, by next friend,

\_\_\_\_\_  
 Petitioner

\_\_\_\_\_  
 Respondent

### JUDGMENT OF PATERNITY

The mother, having appeared in person and by counsel; father, having appeared in person and by counsel; the child having appeared by next friend; and evidence having been heard on the petition to establish paternity, the court now finds:

1. On the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, \_\_\_\_\_  
 gave birth to a male/female child named \_\_\_\_\_ in \_\_\_\_\_;

2. \_\_\_\_\_ is the father of said child;  
       (name of father)

3. \_\_\_\_\_ was born \_\_\_\_\_, in \_\_\_\_\_,  
       (name of mother)                               (date)                               (place of birth)

and is of the \_\_\_\_\_ race, and bears social security number \_\_\_\_ - \_\_\_\_ - \_\_\_\_.

Her maiden name was: \_\_\_\_\_;

4. \_\_\_\_\_ was born \_\_\_\_\_, in \_\_\_\_\_,  
       (name of father)                               (date)                               (place of birth)

and is of the \_\_\_\_\_ race, and bears social security number \_\_\_\_ - \_\_\_\_ - \_\_\_\_;

The Court now enters judgment of paternity accordingly.

Court sets the date for hearing on the issues of custody, support, visitation, name of child, and costs to be held at \_\_\_\_\_ (a.m.) (p.m.) on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

(OPTIONAL)

Pursuant to IC 31-14-10-2, The court orders \_\_\_\_\_ /  
\_\_\_\_\_  
(probation officer)  
\_\_\_\_\_ to prepare a report to assist the Court in determining support, custody  
(caseworker)

and visitation.

(OPTIONAL)

Pursuant to IC 31-14-10-2(2), the court orders that the (child and/or parents) be referred for professional diagnosis and evaluation.

So ORDERED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Judge

Case No.

, by next friend,

Respondent

The mother, having appeared in person and by counsel; father, having appeared in person and by counsel; the child having appeared by next friend; and evidence having been heard on the petition to establish paternity, the court now finds:

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, \_\_\_\_\_  
gave birth to a male/female child named \_\_\_\_\_ in \_\_\_\_\_;

2. \_\_\_\_\_ is the father of said child;  
(name of father)

3. \_\_\_\_\_ was born \_\_\_\_\_, in \_\_\_\_\_,  
(name of mother) (date) (place of birth)

is of the \_\_\_\_\_ race, and bears social security number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_; her maiden name was: \_\_\_\_\_;

4. \_\_\_\_\_ was born \_\_\_\_\_, in \_\_\_\_\_,  
(name of father) (date) (place of birth)

is of the \_\_\_\_\_ race, and bears social security number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_;

The court now enters judgment of paternity accordingly.

The Court finds that it is in the best interests of the child to be known as

\_\_\_\_\_.

After having considered the factors under I.C. 31-14-13-2, the Court further finds that it is in the best interests of the child to be in the custody of \_\_\_\_\_.

**(OPTIONAL)**

The Court further finds that it is in the best interests of the child that \_\_\_\_\_, the non-custodial parent, shall have reasonable visitation rights in regard to \_\_\_\_\_, the minor child, as follows:

Pursuant to the Indiana Child Support Rules and Guidelines, \_\_\_\_\_, shall pay support through the office of the Clerk of the Court, (petitioner and/or respondent)

in the amount of \$\_\_\_\_\_ per week, commencing (retroactive to) \_\_\_\_\_, together with the Clerk's fee as provided by law, for the benefit of the minor child.

The court finds a support arrearage in the amount of \$\_\_\_\_\_ which shall be paid by \_\_\_\_\_ as follows: \_\_\_\_\_ (obligor)

The court further finds \_\_\_\_\_ shall maintain health insurance on the child; (petitioner/respondent)

and \_\_\_\_\_, the custodial parent shall pay the first \$\_\_\_\_\_ of uninsured medical expenses per calendar year, and thereafter the parties shall share the medical costs in  
P-6.03 continued

proportion to their income in accordance with the Indiana Child Support Rules and Guidelines.

**(OPTIONAL)**

The Court further finds that, \_\_\_\_\_, shall pay \$\_\_\_\_\_ to \_\_\_\_\_ as reimbursement for the reasonable and necessary expenses of the mother's pregnancy and child birth, as set forth in I.C. 31-14-17-1.

**(OPTIONAL)**

The court further finds so long as support obligor is current in support payments and arrearage, he/she is entitled to claim the dependency exemption for the child for state and federal tax purposes, in (all/odd/even) years commencing for calendar year \_\_\_\_\_. Custodial parent should be ordered to execute and deliver all required forms to effect this order.

The Court further finds the costs for this action shall be paid by \_\_\_\_\_.

The Court further finds that \_\_\_\_\_, pay the reasonable  
(petitioner/respondent)  
attorney's fees for \_\_\_\_\_ in maintaining said proceeding, in the sum  
of \$\_\_\_\_\_ through the office of the Clerk of the Court in the following manner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

So ordered, adjudged and decreed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Judge

## **JURY INSTRUCTIONS**

*The Benchbook Committee recommends the following Civil Pattern Jury Instructions (Rev. 1998):*

Instruction No. 1.01: **Preliminary Instruction – Duty of Jurors – Admonishment**  
Instruction No. 1.03: **Preliminary Instruction – Issues for Trial – Parties’ Burden**  
Instruction No. 1.05: **Preliminary Instruction - Burden of Proof - Preponderance of the Evidence**  
Instruction No. 1.09: **Preliminary Instruction - Credibility of Witnesses - Weighing Evidence**  
Instruction No. 1.17: **Preliminary Instruction - Personal Knowledge of Juror**  
Instruction No. 1.11: **Preliminary Instruction - General**  
Instruction No. 1.13: **Preliminary Instruction - Conduct of Trial**  
Instruction No. 1.15: **Preliminary Instruction - Final Preliminary Instruction**  
Instruction No. 37.01: **Final Instruction – General Instruction for Verdict**

*In addition, the following forms are provided:*

**Final Instruction – Absence of Child**  
**Final Instruction – Physical Appearance**  
**Final Instruction – Paternity (If no Genetic Testing)**  
**Proposed Order Entering Judgment on Jury Verdict**

*The Benchbook Committee does not intend for the proposed final instructions to be complete. They should be supplemented with such pattern or other final instructions as are appropriate given the facts and evidence presented at trial.*

The proposed preliminary instructions may be given as a complete set once modified to meet the particular facts of the case at trial.

Please remember to enter judgment on the jury’s verdict.

**Final Instruction – Absence of Child**

**The fact the child has not been present in the courtroom cannot be taken as evidence for or against the petitioner or respondent.**

### **Final Instruction – Physical Appearance**

**In determining whether a party is the Father of the child, you are not permitted to consider the resemblance or lack of resemblance the child bears to that party. In determining this case you may only consider the evidence properly admitted.**

**[Note: Should only be given if requested by one of the parties.]**

***Nott v. Bender*, 202 N.E. 2d 745 (Ind. 1964)**

**Final Instruction – Paternity (If no Genetic Testing)**

**If you find from a consideration of all the evidence that the allegations of the Paternity Petition have been proven by a preponderance of the evidence, that is: the Mother and (insert name of putative Father) had sexual intercourse during the probable period of conception and that as a result of that intercourse the child in question was conceived, then your verdict should find (insert name of putative Father) to be the Father.**

**However, if you find from a consideration of all the evidence that the allegations of the Paternity Petition have not been proven by a preponderance of the evidence, then you should find that (insert name of putative Father) is not the Father of the child in question.**

**Order Entering Judgment on Jury Verdict**

**STATE OF INDIANA**

\_\_\_\_\_ **COURT**

**In the Matter of** \_\_\_\_\_

\_\_\_\_\_ **A Child Born Out of Wedlock**

**Case No.** \_\_\_\_\_

**ORDER ENTERING JUDGMENT ON JURY VERDICT**

**This matter having come before the Court for trial by jury, and the jury having found for the (Petitioner/Respondent) and against the (Petitioner/Respondent), the Court now enters judgment on said verdict.**

**It is further Ordered:**

**(Insert name of putative Father) is/ is not the Father of ( insert name of child).**

**[This matter is set for hearing on \_\_\_\_\_, 200\_\_ at \_\_\_\_\_ a.m./p.m. for hearing on all remaining issues.]**

**[(Insert name of putative Father) is discharged and the case is dismissed.]**

**The costs herein have been paid.**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**Judge**

**SCOPE NOTE**  
**Modification**

**I. IN GENERAL**

**A. Modification of Custody:**

1. Pursuant to I.C. 31-14-13-6, the Court may not modify custody unless modification is in the best interests of the child **and** there is a substantial change in one or more of the factors listed in I.C. 31-14-13-2, and, if applicable, I.C. 31- 14-13-2.5 (additional factors where child cared for by de facto custodian).
2. The Court may not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors listed in the statutes noted above. I.C. 31-14-13-9.

Circumstances, which existed at the time of a prior custody determination but not brought to the court's attention or about which there is new information, may be considered at a modification hearing. *See Dwyer v. Wynkoop*, 684 N.E.2d 245 (Ind. Ct. App. 1997)

**B. Modification of Visitation:**

1. The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. I.C. 31-14-14-2.
2. There is a rebuttable presumption that a noncustodial parent convicted of domestic battery witnessed or heard by the child is entitled to only supervised visitation for at least one (1) year and not more than two (2) years after the conviction, or until the child becomes emancipated, whichever occurs first. I.C. 31- 14-14-5.

**C. Modification of Support:**

1. A support order may be modified or revoked upon showing:
  - a. A substantial change in circumstances that makes the terms unreasonable, or

- b. The order differs by more than twenty percent (20%) from the current guideline amount and the support order was issued at least twelve (12) months before the modification petition was filed.

I.C. 31-14-11-8

2. Unless otherwise agreed in writing or expressly provided in the support order, the obligation to pay support is terminated by the child's emancipation but not the death of the obligated parent. I.C. 31-14-11-20. A deceased parent's personal representative may petition for modification or revocation of support orders to the extent just and appropriate under the circumstances. I.C. 31-14-11-20. Unpaid support constitutes a priority claim against the deceased parent's estate. I.C. 31-14-11-21.

**D. Emancipation:**

1. The duty to pay support ceases when the child reaches twenty-one (21) years of age unless:

- a. The child is emancipated before reaching twenty-one (21), in which case the duty to support, except for educational expenses, terminates at the time of emancipation. An order for educational expenses continues in effect until further order of the Court.

- b. The child is incapacitated. If this occurs, the duty to support continues during the incapacity or until further order of the

Court.

I.C. 31-14-11-18.

Note: *Compare* I.C. 31-14-11-18 *with* I.C. 31-16-6-6. In the statutes governing paternity, there are no specific provisions for support abatement when the child is eighteen (18) and out of school; and there are no mandatory emancipation situations stated, such as marriage or joining the armed services. However, Equal Protection considerations may require the Court to apply these omitted provisions in a Paternity situation.

2. The duty to pay a support arrearage does not terminate upon the child's emancipation. I.C. 31-14-11-22 (Note: The Benchbook Committee believes that the cite in this statute to I.C. 31-14-11-21 is a typographical error and should refer to I.C. 31-14-11-18).

**E. Related Issues:**

1. If an order establishing Paternity is vacated based on fraud or mistake of fact, the duty to support, including any arrearage terminates. I.C. 31-14-11-23.
2. If a child dies while a support order is in effect, the court may order either or both parents to pay reasonable funeral expenses. I.C. 31-14-11-17.
3. After a proper showing of necessity, the court may order the person receiving support to provide an accounting of future expenditures. I.C. 31-14-11-24.

**F. Cases of Interest:**

Express repudiation of an oral agreement to modify custody, visitation and support, before the agreement is reduced to writing and approved by the court, renders the agreement unenforceable. In Re K.J.L., 725 N.E.2d 155 (Ind.Ct.App. 2000).